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STATE DOCUMENTS

STATE OF MONTANA

AERONAUTICS COMMISSION

MONTANA LAWS GOVERNING AERONAUTICS

Compiled to November 28, 1945

Office of

MONTANA AERONAUTICS COMMISSION

Helena, Montana

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(All laws contained herein are covered in Chapter 152, Laws of 1945, unless a different source has been specified).

STATE AERONAUTICS COMMISSION

DEFINITIONS

The following words, terms, and phrases shall have the meanings herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires.

"Aeronautics" means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities, and air instruction.

"Aircraft" means any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air.

"Public Aircraft" means any aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any state, territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

"Civil Aircraft" means any aircraft other than a public aircraft.

"Airport" means any area, of land or water, except a restricted landing area, which is designed for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights of way, whether heretofore or hereafter established.

"Commission" means the state areonautical commission created by this act; "state" or "this state" means the State of Montana.

"Restricted Area" means any area of land, water or both, which is used or is made available for the landing and take-off of aircraft, the use of which shall, except in case of emergency, be only as provided from time to time by the commission.

"Air Navigation Facility" means any facility other than one owned or controlled by the federal government, used in, available for use in, or designed for use in, aid of air navigation, including airports, restricted landing areas, and any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience, to the

safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted area, and any combination of any or all of such facilities.

"Air Navigation" means the operation or navigation of aircraft in the air space over this state, or upon any airport or restricted landing area within this state.

"Operation of Aircraft" or "Operate Aircraft" means the use of aircraft for the purpose of air navigation, and includes the navigation or piloting of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of the statutes of this state.

"Airman" means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way and (excepting individuals employed outside the United States, any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, and any individual performing inspection or mechanical duties in connection with aircraft owned or operated by him) any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances; and any individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator.

"Air Instruction" means the imparting of aeronautical information by any aeronautics instructor in or by any air school or flying club.

"Air School" means any person engaged in giving or offering to give, instruction, in aeronautics, either in flying or ground subjects, or both, for or without hire or reward, and advertising, representing, or holding himself out as giving or offering to give such instruction. It does not include any public school or university of this state, or any institution of higher learning duly accredited and approved for carrying on collegiate work.

"Aeronautics Instructor" means any individual engaged in giving instruction, or offering to give instruction, in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising such occupation, without calling his facilities an "air school" or anything equivalent thereto, and without employing or using other instructors. It does not include any instructor in any public school or university of this state, or any institution of higher learning duly accredited and approved for carrying on collegiate work, while engaged in his duties as such instructor.

"Flying Club" means any person other than an individual, which, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure or both.

"Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

"State Airway" means a route in the navigable air space over and above the lands or waters of this state, designated by the commission as a route suitable for air navigation.

"Navigable Air Space" means air space above the minimum altitudes of flight prescribed by the laws of this state or by regulations of the commission consistent therewith.

"Municipality" means any county, city, village or town of this state and any other political subdivision, public corporation, authority, or district in this state which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.

"Airport Protection Privileges" means easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to insure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation thereof.

"Airport Hazard" means any structure, object of natural growth, or use of land, which obstructs the air space required for the flight of aircraft in landing or taking off at any airport or restricted landing area or is otherwise hazardous to such landing or taking off.

The singular shall include the plural, and the plural the singular.

DECLARATION OF POLICY

It is hereby declared that the purpose of this act (Chapter 152, Laws of 1945) is to further the public interest and aeronautical progress by providing for the protection and promotion of safety in aeronautics; by cooperating in effecting a uniformity of the laws relating to the development and regulation of aeronautics in the several states; by revising existing statutes relative to the development and regulation of aeronautics so as to grant to a state agency such powers and impose upon it such duties that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction, may assist in the promotion of a statewide system of airports, may co-operate with and assist the political subdivisions of this state and others engaged in aeronautics, and may encourage and

develop aeronautics; by establishing uniform regulations, consistent with federal regulations and those of other states, in order that those engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and the rights of others; and by providing for co-operation with the federal authorities in the development of a national system of civil aviation and for co-ordination of the aeronautical activities of those authorities and the authorities of this state by assisting in accomplishing the purposes of federal legislation and eliminating costly and unnecessary duplication of functions.

CREATION

(a) Composition. There is hereby created a commission to be known as the state aeronautics commission. Said commission shall consist of seven persons who shall be appointed by the governor within thirty days after the passage and approval of this act, and who shall serve without compensation except that they shall receive a per diem of $10.00 for each day actually expended in the performance of their duties under this act and shall be reimbursed for all actual and necessary traveling expenses, incurred by them in the discharge of their official duties, provided, however, that no member of the commission shall receive per diem allowance in excess of five hundred dollars ($500.00) annually. The governor shall appoint the members of said commission in the following manner: One shall be selected from the Montana Pilots' Association; one from Montanans, Incorporated; one from the Municipal League; one from the County Commissioners Association; one selected from among those actively engaged in aviation education in Montana; one to be selected by the governor as a representative of interstate commercial airline operators, who must at the time of appointment, be an employee, or official of such an operator, and whose residence must be within the State of Montana; and one to be selected by the governor, who is an active base operator in the state at the time of his appointment or an official of such base operator of flying services, or flying schools.

(b) The members of the said commission shall serve for a period of four years from date of their appointment and until their successors are appointed and qualified. Provided, however, that in making said appointments, the governor may shorten the term of two of said appointees to any period of time less than four years so that the terms of office of all seven members of the commission shall not expire in the same year. The members of the commission may be removed by the governor after notice and hearing for inefficiency, neglect or duty, or malfeasance in office.

ORGANIZATION, MEETINGS, REPORTS

The commission shall, within 30 days after its appointment, organize, adopt a seal, and make such rules and regulations for its administration, not inconsistent herewith, as it may deem expedient and may from time to time amend such rules and regulations . At such organization meeting it shall elect from among its members a chairman, vice-chairman and a secretary, to serve for one year, and annually thereafter shall select such officers; all to serve until their successors are appointed and qualified. It shall at its initial meeting fix the date and place for its regular meetings. Four members shall constitute a quorum, and no action shall be taken by less than a majority of the commission. Special meetings may be called as provided by its rules and regulations. All regular and special commission meetings shall be open to the public. It shall report in writing to the governor on or about December 1st, of each year. Said report shall contain a summary of its proceedings during the preceding fiscal year, a detailed and itemized statement of all revenue and of all expenditures made by or in behalf of the commission, such other information as it may deem necessary or useful, and any additional information which may be requested by the governor. The fiscal year of the commission shall conform to the fiscal year of the state.

OFFICE AND EXPENSE—EMPLOYEES

Suitable offices and office equipment shall be provided by the state for the commission in the city of Helena, and it may maintain offices in any other city in the state that it may designate and may incur the necessary expense for office furniture, stationery, printing, incidental expenses, and other expenses necessary for the enforcement of this act and the general promotion of aronautics within the state. Regular meetings shall be held at its offices at Helena, but whenever the convenience of the public or of the parties may be promoted, or delay or expense may be prevented, it may hold hearings or proceedings at any other place designated by it. It may employ such clerical and other employees and assistants as it may deem necessary for the proper transaction of its business and shall fix their salaries.

GENERAL POWERS AND DUTIES OF COMMISSION

(a) The commission shall have general supervision over aeronautics within this state. It is empowered and directed to encourage, foster, and assist in the development of aeronautics in this state and to encourage the establishment of airports and other air navigation facilities.

(b) **Co-operation with federal government**—It shall co-operate with and assist the federal government, the political subdivisions of this state, and others engaged in aeronautics or the promotion of aeronautics, and

shall seek to co-ordinate the aeronautical activities of these bodies. To this end, the commission is empowered to confer with or to hold joint hearings with any federal aeronautical agency in connection with any matter arising under this act, or relating to the sound development of aeronautics, and to avail itself of the co-operation, services, records, and facilities of such federal agencies, as fully as may be practicable, in the administration and enforcement of this act. It shall reciprocate by furnishing to the federal agencies its co-operation, services, records and facilities, insofar as may be practicable.

It shall report to the appropriate federal agency all accidents in aeronautics in this state of which it is informed and preserve, protect and prevent the removal of the component parts of any aircraft involved in an accident being investigated by it until a federal agency institutes an investigation. It shall report to the appropriate federal agency all refusals by it to register federal licenses, certificates or permits and all revocations of certificates of registration, and the reasons therefor, and all penalties of which it has knowledge imposed upon airmen for violations of the laws of this state relating to aeronautics or for violations of the rules, regulations or orders of the commission.

(c) **Rules, regulations and standards**—It may perform such acts, issue and amend such orders and make, promulgate and amend such reasonable general or special rules, regulations and procedure, and establish such minimum standards, consistent with the provisions of this act, as it shall deem necessary to carry out the provisions of this act and to perform its duties hereunder; all commensurate with and for the purpose of protecting and insuring the general public interest and safety, the safety of persons receiving instruction concerning, or operating, using or traveling in aircraft, and of persons and property on land or water, and to develop and promote aeronautics in this state. No rule or regulation of the commission shall apply to airports or other air navigation facilities owned or controlled by the federal government within this state.

(d) **Conformity to federal legislation and rules**—All rules and regulations prescribed by the commission under the authority of this act shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and rules and standards issued from time to time pursuant thereto.

(e) **Filing of rules**—It shall keep on file at the principal office of the commission, a copy of all its rules and regulations, for public inspection.

(f) **State airways system**—It may designate, design and establish, expand, or modify a state airways system which will best serve the interests of the state. It may chart such airways system and arrange for

publication and distribution of such maps and charts and notices and bulletins relating to such airways as may be required in the public interest. The system shall be supplementary to and co-ordinated in design and operation with the federal airways system. It may include all types of air navigation facilities, whether publicly or privately owned, provided that such facilities conform to federal safety standards.

(g) **Technical services to municipalities**—It may, insofar as is reasonably possible, offer the engineering or other technical services of the commission, without charge, to any municipality desiring them in connection with the construction, maintenance or operation or proposed construction, maintenance, or operation of an airport or restricted landing area.

(h) **Legislation**—It may draft and recommend necessary legislation to advance the interests of the state in aeronautics and represent the state in aeronautical matters before federal agencies and other state agencies.

(i) **Intervention**—It may participate as party plaintiff or defendant, or as intervener on behalf of the state or any municipality or citizen thereof in any controversy having to do with any claimed encroachments by the federal government or any foreign state upon any state or individual rights pertaining to aeronautics.

(j) **Enforcement of aeronautics laws**—It shall be the duty of the commission, its members and employees, and every state, county and municipal officer charged with the enforcement of state or municipal laws to enforce and assist in the enforcement of this act and of all rules and regulations issued pursuant thereto, and of all other laws of this state relating to aeronautics, and, in the aid of such enforcement, general police powers are hereby conferred upon the commission, each of its members, and such of the officers and employees of the commission as may be designated by it to exercise such powers. The Commission is further authorized, in the name of the state, to enforce the provisions of this act and the rules and regulations issued pursuant thereto by injunction in the courts of this state. Municipalities are authorized to co-operate with the commission in the development of aeronautics and aeronautics facilities in this state. (The commission may use the facilities and services of other agencies of the state when reasonably available.)

(k) **Investigations**—The commission, any member thereof, or any officer or employee of the commission designated by it, shall have the power to hold investigations, inquiries, and hearings concerning matters covered by the provisions of this act and orders, rules, and regulations of the commission, and concerning accidents in aeronautics within this state. All hearings so conducted shall be open to the public. Each commissioner and every officer or employee of the commission designated by it to hold any inquiry, investigations, or hearings shall have power to

administer oaths and affirmations, certify to all official acts, issue subpoenas, and compel the attendance and testimony of witnesses, and the production of papers, books, and documents. In case of failure to comply with any subpoenas or orders issued under authority of this act, the commission, or its authorized representative, may invoke the aid of any court of this state of general jurisdiction. The court may thereupon order the witness to comply with the requirements of the subpoena or order or to give evidence touching the matter in question. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(l) **Reports of investigations**—Limitations on use—In order to facilitate the making of investigations by the commission in the interest of public safety and promotion of aeronautics, the public interest requires, and it is, therefore provided that the reports of investigations or hearings, or any part thereof, shall not be admitted in evidence or used for any purpose in any suit, action or proceedings, growing out of any matter referred to in said investigation, hearing, or report thereof, except in case of criminal or other proceedings instituted in behalf of the commission or this state under the provisions of this act and other laws of this state relating to aeronautics, nor shall any commissioners, or any officer or employee of the commission be required to testify to any facts ascertained in, or information gained by reason of, his official capacity, or be required to testify as an expert witness in any suit, action, or proceeding involving any aircraft. Subject to the fore-going provisions, the commission may in its discretion make available to appropriate federal and state agencies information and material developed in the course of its hearings and investigations.

(m) **Financial assistance to municipalities**—The commission may render assistance in the acquisition, development, operation, or maintenance of airports owned, controlled or operated by municipalities in this state, out of appropriations made by the legislature for that purpose.

(n) **Authority to contract**—The commission may enter into any contracts necessary to the execution of the powers granted the commission by this act.

(o) **No exclusive rights granted**—The commission shall grant no exclusive right for the use of any airway, airport, restricted landing area, or other air navigation facility under its jurisdiction. This subdivision shall not prevent the making of leases in accordance with other provisions of this act.

FEDERAL AID

(a) The commission is authorized to co-operate with the government of the United States, and any agency or department thereof, in the acquisition, construction, improvement, maintenance and operation of air-

ports and other air navigation facilities in this state, and to comply with the provisions of the laws of the United States and any regulations made thereunder for the expenditure of federal monies upon such airports and other navigation facilities.

(b) **Authority to receive federal monies for state and municipalities** It is authorized to accept, receive, and receipt for federal monies and other monies either public or private, for and in behalf of this state, or any municipality thereof, for the acquisition, construction, improvement, maintenance and operation of airports and other air navigation facilities, whether such work is to be done by the state or by such municipalities, or jointly, aided by grants of aid from the United States, upon such terms and conditions as are or may be prescribed by the laws of the United States and any rules or regulations made thereunder, and it is authorized to act as agent of any municipality of this state upon the request of such municipality, in accepting, receiving, and receipting for such monies in its behalf for airports or other air navigation facility purposes, and in contracting for the acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities, financed either in whole or in part by federal monies, and the governing body of any such municipality is authorized to designate the commission as its agent for such purposes and to enter into an agreement with it prescribing the terms and conditions of such agency in accordance with federal laws, rules, and regulations and with this act. Such monies as are paid over by the United States government shall be retained by the state or paid over to said municipalities under such terms and conditions as may be imposed by the United States government in making such grants.

(c) All contracts for the acquisition, construction, improvement, maintenance and operation of airports, or other air navigation facilities made by the commission, either as agent of this state or as the agent of any municipality, shall be made pursuant to the laws of this state governing the making of like contracts by the state or by municipalities; provided, however, that, where the acquisition, construction, improvement, maintenance and operation of any airport, landing strip, or other air navigation facility is financed wholly or partially with federal monies, the commission, as agent of the state or of any municipality thereof, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary.

(d) All monies accepted for disbursement by the commission pursuant to subdivision of this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purposes

for which the monies were made available, and held by the state in trust for such purposes. All such monies are hereby appropriated for the purpose for which the same were made available, to be expended in accordance with federal laws and regulations and with this act. The commission is authorized, whether acting for this state or as the agent of any of its municipalities, or when requested by the United States government or any agency or department thereof, to disburse such monies for the designated purposes, but this shall not preclude any other authorized method of disbursement.

Regulation of Aircraft, Airmen, Airports and Instruction—

(a) The commission is authorized:

(b) To require the annual registration of federal licenses, permits or certificates of civil aircraft engaged in air navigation within this state, of airmen engaged in aeronautics within this state, and of aeronautics instructors giving instruction in flying subjects, and to issue certificates of such registration. Such certificates of registration shall constitute licenses of such aircraft, airmen and instructors for operations within this state to the extent permitted by the federal licenses certificates or permits so registered. It may charge a fee for the registration of each federal license, certificate or permit not exceeding one dollar. It may accept as evidence of the holding of a federal license, certificate or permit the verifid application of the owner of the aircraft, the airman or the instructor, which application shall contain such information as the commission may by rule, regulation, or order prescribe.

(c) To require the registration of aircraft repair shops, aircraft, aircraft parts and sales dealers and other persons dealing in aviation. To license aircraft repair shops, aircraft, aircraft parts and dealers and other persons operating in aviation, the operation of air schools and aeronautics instructors giving instruction in ground subjects in accordance with rules and regulations to be adopted by the commission and to annually renew such licenses. It may charge for the original licensing of aircraft repair shops, aircraft, aircraft parts and sales dealers and other persons operating in aviation, air schools and aeronautics instructors not more than one dollar and for the renewal of any such license not more than one dollar.

(d) To approve airport and restricted landing area sites and to license airports, restricted landing areas, or other air navigation facilities, in accordance with rules and regulations to be adopted by this commission, (and to annually renew such licenses). (Licenses granted under this section or under any prior law shall be annually renewed upon payment of the fee therefore), and licenses shall be granted for airports and restricted landing areas which were being operated on or before the 1st day

of April, 1945, without the requirement of a certificate of approval, unless the commission shall reasonably determine, after a public hearing to be called by it and held in the same manner and upon the same notice as is provided for hearings upon certificates of approval or original licenses, that the operation of such airport or restricted landing area is hazardous to persons operating, using or traveling in aircraft or to persons and property on the ground. It shall make no charge for approval certificates of proposed property acquisition for airport or restricted landing area purposes. It may charge for the issuance of each original license for an airport or restricted landing area not to exceed one dollar (and, for each annual renewal of such license, not to exceed one dollar).

(e) To temporarily or permanently revoke any license or certificate of registration of an aircraft, airman, air school, or aeronautics instructor, issued by it, upon the notification by the civil aeronautics authority that it has revoked the license or certificate of an aircraft, airman, air school, or aeronautics instructor, giving reasons for such action.

(f) Except as hereinafter provided, it shall be unlawful for any person to operate or cause or authorize to be operated any civil aircraft within this state unless such aircraft has an appropriate effective license, certificate or permit issued by the United States government which has been registered with the commission and such registration with the commission is in full force and effect, and it shall be unlawful for any person to engage in aeronautics as an airman in this state unless he has from the commission an effective certificate of registration of an appropriate effective airman's license, certificate or permit issued by the United States government authorizing him to engage in the particular class of aeronautics in which he is engaged.

(g) **Exceptions to registration requirements**—The provisions of paragraph (c) and paragraph (e) of this section shall not apply to:

(1) An aircraft which has been licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of such licensed aircraft;

(2) An aircraft which is owned by a non-resident of this state who is lawfully entitled to operate such aircraft in the state of his residence;

(3) An aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce.

(4) An airman operating military or public aircraft, or any aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of such licensed aircraft;

(5) Persons operating model aircraft nor to any person piloting an aircraft which is equipped with fully functioning dual controls when a licensed instructor is in full charge of one set of said controls and such

flight is solely for instruction or for the demonstration of said aircraft to a bona fide prospective purchaser;

(6) A non-resident operating aircraft in this state who is lawfully entitled to operate aircraft in the state of residence;

(7) An airman while operating or taking part in the operation of an aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce.

2. **Exhibition of Licenses and Certificates—**

The federal license, certificate, or permit, and the evidence of registration in this or another state, if any, required for an airman shall be kept in the personal possession of the airman when he is operating within this state and must be presented for inspection upon the demand of any passenger, or any peace officer of this state, any authorized member, official, or employee of the commission or any official, manager or person in charge of any airport in this state upon which he shall land, or upon the reasonable request of any other person. The federal aircraft license, certificate or permit, and the evidence of registration in this or another state, if any, required for aircraft must be carried in every aircraft operating in this state at all times and must be conspicuously posted therein where it may readily be seen by passengers or inspectors and must be presented for inspection upon demand of any passenger, any peace officer of this state, any member, authorized official, or employee of the commission, or any official, manager, or person in charge of any airport in this state upon which it shall land, or upon the reasonable request of any person.

3. **Air Instruction Without License or Certificate Unlawful**

It shall be unlawful for any person to operate an air school or to give instructions in flying or ground subjects in this state unless such person, if an air school or aeronautics instructor in ground subjects, is the holder of an annual license issued by the commission, or if an aeronautics instruction in flying subjects has an appropriate effective license certificate or permit issued by the United States government authorizing him to engage in the particular class of flight instruction in which he is engaged, which has been registered with the commission and such registration with the commission is in full force and effect.

4. **Licensing of Airports and Other Air Navigation Facilities**

All proposed airports, restricted landing areas, and other air navigation shall be first licensed by the commission before they, or any of them, shall be used or operated. Any municipality or person acquiring property for the purpose of constructing or establishing an airport or restricted landing area shall, prior to such acquisition, make application to the commission for a certificate of approval of the site selected and the general

purpose or purposes for which the property is to be acquired, to insure that the property and its use shall conform to minimum standards of safety and shall serve public interest. It shall be unlawful for any municipality or officer or employee thereof, or for any person, to operate an airport, restricted landing area, or other air navigation facility for which an annual license has not been issued by the commission.

5. **Hearings on Applications for Certificates and Licenses**

Whenever the commission makes an order granting or denying a certificate of approval of an airport or a restricted landing area, or an original license to use or operate an airport, restricted landing area or other air navigation facility, and the applicant or any interested municipality, within 15 days after notice of such order has been sent the applicant by registered mail, demands a public hearing, or whenever the commission desires to hold a public hearing before making such order, such a public hearing in relation thereto shall be held in the municipality applying for the certificate of approval or license, or in case the application was made by anyone other than a municipality, at the county seat of the county in which the proposed airport, restricted landing area or other air navigation facility is proposed to be situated, at which hearing parties in interest and other persons shall have an opportunity to be heard. Notice of the hearing shall be published by the commission in a legal newspaper of general circulation in the county in which the hearing is to be held, at least twice, the first publication to be at least 15 days prior to the date of hearing. After a proper and timely demand has been made the order shall be stayed until after the hearing, when the commission may affirm, modify or reverse it, or make a new order. If no hearing is demanded as herein provided, the order shall become effective upon the expiration of the time permitted for making a demand. Where a certificate of approval of an airport or restricted landing area has been issued by the commission, it may grant a license for operation and use, and no hearing may be demanded thereon.

6. **Standards for Issuing Certificates of Approval and Licenses**

In determining whether it shall issue a certificate of approval or license for the use or operation of any proposed airport or restricted landing area, the commission shall take into consideration its proposed location, size and layout, the relationship of the proposed airport or restricted landing area to a comprehensive plan for statewide and nationwide development, whether there are safe areas available for expansion purposes, whether the adjoining area is free from obstructions based on a proper glide ration, the nature of the terrain, the nature of the uses to which the proposed airport or restricted landing area will be put, and the possibilities for future development.

7. **Exceptions—Personal Use**

The provisions of Sections 4, 5 and 6 shall not apply to restricted landing areas designed for personal use.

8. **Revocation of Certificate of Apprvoal and Licenses**

The commission is empowered to temporarily or permanently revoke any certificate of approval or license issued by it when it shall determine that an airport, restricted landing area, or other navigation facilities are not being maintained or used in accordance with the provisions of this act and the rules and regulations lawfully promulgated pursuant thereto.

9. **Exceptions—Federal Government**

The provisions of section 12 to 15, both inclusive, shall not apply to any airport, restricted landing area or other air navigation facility owned or operated by the federal government within this state.

10. **Orders of Commission**

In any case where the commission refuses to issue a certificate of approval of or license (or renewal of license) for an airport, restricted landing area or other air navigation facility, or refuses to grant a license to an air school or to an aeronautics instructor in ground subjects, or in any case where it shall issue any order requiring certain things to be done, or revoking any license or certificate, it shall set forth its reasons therefor and shall state the requirements to be met before such approval will be given, registration permitted, license granted or order modified or changed. Any order made by the commission pursuant to the provisions of this act shall be served upon the interested persons by registered mail or in person. To carry out the provisions of this act the commission, any member thereof, or any officer or employee of the commission, and any officers, state or municipal, charged with the duty of enforcing this act may inspect and examine at reasonable hours any premises, and the buildings and other structures thereon, where airports, restricted landing areas, air schools, flying clubs or other air navigation facilities or aeronautical activities are operated or carried on.

(a) Any person aggrieved by an order of the commission, or by the granting or denial of any license, certificate or registration may have the action of the commission reviewed by a court of record of this state in the following manner:

Any person against whom an order has been entered by the state aeronautics commission may, within ten days after the service thereof, appeal from such order to the district court of the county in which such person resides or the county in which any property affected by the order is located. Such appeal shall be taken by filing with the clerk of the district court to which such appeal is taken a notice of appeal which shall state the substance of the order appealed from the date thereof and

that such person appeals to said court from the same, and by serving a copy of said notice of apepal upon either the chairman or vice-chairman and secretary of the commission. The order of filing and service is immaterial. Said appeal shall be set down for hearing in not less than ten days nor more than thirty days after the filing of said notice of appeal unless the judge shall, for sufficient cause resulting from press of business or other reason, be unable to hear said appeal within said time. In that event, said hearing may be deferred until the same can be heard by the court. Said appeal may be heard without formal pleadings.

COUNTY, CITY AND TOWN AIRPORTS

Chapter 54, Session Laws of 1941, reads in part as follows:

Counties, cities and towns in this state, may either individually or by the joint action of a county and one (1) or more of the cities and towns within its border acquire by gift, deed, purchase or condemnation, land for airport or landing field purposes and thereon establish, construct, own, control, lease, equip, improve, operate, and regulate airports or landing fields for the use of airplanes and other aircraft, and may use for such purpose or purposes any property suitable therefor that now or may at any time hereafter be acquired, owned or controlled by such county, city or town.

Any lands acquired, owned, controlled or occupied by any county, city or town, or by a county and city or cities, or town or towns, pursuant to joint action as herein provided for the purposes enumerated in Section 5668.35, shall and are hereby declared to be acquired, owned, controlled, and occupied for a public use, and as a matter of public necessity, and such counties, cities and towns, whether acting individually or jointly shall have the right to acquire property for such purposes under the power of eminent domain as and for a public use or necessity."

"The county, city or town, or the county and any city or cities, town or towns acting jointly as herein authorized, having established an airport or landing field and acquired property for such purpose, may construct, improve, equip, maintain, and operate the same, and for that purpose, may create a board or body from the inhabitants of such county, city or town, or such joint subdivisions of the state for the purpose of conferring upon them and may confer upon them the jurisdiction for the improvement, equipment, maintenance and operation of such airport or landing field. The board of county commissioners, the city or town council, as the case may be, or the board of county commissioners and the council or councils under a joint venture may adopt rules and establish fees or charges for the use of such airport or landing field, or may authorize such board or body to do so, subject, however, to the approval of the appointing power before the same shall take effect. All expenses of such construction, improvement, equipment, maintenance and operation shall

be a charge against such county, city or town, or, when a county and city or cities, town or towns, acts jointly under the authority herein given, such charges shall be against the joint subdivisions of the state, and shall be apportioned according to benefits to accrue, the proportion to be paid by each to be fixed in advance by joint resolution of the two (2) governing bodies.

"For the purpose of meeting the charges hereinbefore mentioned when the airport or landing field is such joint venture, a joint fund shall be created and maintained into which each of the political subdivisions interested shall deposit its proportionate share in accordance with the predetermination of the board of county commissioners and council, or councils, affected.

"All disbursements from such fund shall be made by order of such joint board or body, if one be created as hereinabove authorized, otherwise under such rules and regulations as the joint control by the commissioners and council or councils may adopt.

"For the purpose of establishing, constructing, equipping, maintaining and operating airports and landing fields under the provisions of this act the county commissioners or the city or town council may each year assess and levy, in adidtion to the annual levy for general administrative purposes, a tax of not to exceed one (1) mill on the dollar of taxable value of the property of such county, city or town. In the event of a jointly established airport or landing field, the county commissioners and the council or councils involved shall determine in advance the levy necessary for such purposes and the proportion each political subdivision joining the venture shall pay, based upon the benefits it is determined each shall derive from the project. Provided that if it be found that the levy hereby authorized will be insufficient for the purposes herein enumerated, the commissioners and councils acting are hereby authorized and empowered to contract an indebtedness on behalf of such county, city or town, as the case may be, upon the credit thereof by borrowing money or issuing bonds for such purposes, provided that no money may be borrowed and no bonds may be issued for such purpose until the proposition has been submitted to the taxpayers affected thereby, and a majority vote be cast therefor.

"All levies and expenditures heretofore made and engagements entered into by counties, cities or towns for the purposes now contemplated by this act, and all elections held in counties, cities or towns for the purpose of creating indebtedness for such purposes, wherein a majority of the vote cast was in favor of such indebtedness, whether such counties, cities and towns were acting individually or jointly, under the authority of this act, are hereby validated and declared legally created, entered into and made, and all evidence of such indebtedness are declared to be legal

obligations of the county, city or town wherein such a majority vote has been cast in favor of such indebtedness."

ELIMINATION OF DANGEROUS OBSTRUCTIONS OF AIR SPACE IN VICINITY OF PUBLIC AIRPORTS

Chapter 12, Session Laws of 1939 reads in part as follows:

The height of buildings and/or other structures is hereby regulated and restricted within a distance of two miles from any such public airport or landing field, measured at a right angle from any side or in a radial line from any corner of the established boundary line thereof, in any and all directions, as follows:

(1) **Approach Zone:** The trapezoidal portion of the total two-mile zone area, 500 feet in width at the boundary of the field or airport, and broadening to a width of 2,500 feet two miles distant, the center line of which shall be a continuation of the center line of each runway at and upon such public airports and landing fields, known as the approach zone, shall have no building, or other structure, natural feature or object of any kind therein, the height of which is more than one-twentieth its distance from the nearest boundary of the airport or landing field.

(2) **Turning Zone:** The remaining portion of the two-mile zone area surrounding such public airports and landing fields aforesaid, lying between the approach zones aforesaid, and known as turning zones, shall have no building or other structure, natural feature or objects of any kind therein, the height of which is more than one-seventh its distance from the nearest boundary of the airport or landing field. In measuring distances and heights to determine the zone standard, measurements shall be taken from the nearest side of the building or structure or other object, to the nearest side of the airport or landing field aforesaid, and in the event of airports having boundaries not regular, the nearest established perimeter of such port and field shall be used, as distinguished from actual boundary.

It shall be the duty and authority of every public body or governmental authority owning, operating or maintaining a public airport or landing field, to enforce the provisions of this act as pertains to areas surrounding the particular airport under the control of such body, the same to be enforced in either the court of law or of equity in the State of Montana having jurisdiction of such action, cases to be instituted in the name of the governmental body charged hereunder with the enforcement hereof, and such action may be to prevent the erection, construction or maintenance, of such buildings or other structures or parts of buildings or structures, as may exceed the height limits heretofore fixed by this law, or to restrain, correct or abate any such violation ,and to prevent the occupancy and use of any part of a building or structure erected in violation of this law.

It is hereby made the duty of every person, firm or corporation in this state, proposing to erect, establish or maintain any building or other structure, or to grow any natural object that would exceed the height limit established by law when grown, to proceed to erect, establish or maintain such structure, or plant said natural object, without first making application to the proper officer of the United States, the State of Montana, any county or any municipality (where the proposed erection or action is within two miles of a public airport or landing field as herein set forth), whichever of said bodies has control of the airport or landing field affecting the area, and obtaining from the proper authority a permit or object proposed; and, no permit shall be granted unless the specifications of the building or other structure or object reveal that the total height shall not exceed the height limits fixed by law for the zone in which the same is to be established; and no permit shall be issued in violation hereof, and any erection or maintenance without a permit which is in violation hereof, shall be ineffectual in law or equity, and shall be and remain a nullity so far as this act is concerned, and the enforcement remedies hereunder.

With respect to any building or other structure existing at the time of the passage of this act, and which does not conform to the regulations of this act in the matter of height ,the governmental authority affected thereby, whether the United States, the State of Montana, the several counies, or the several municipalities, in their own right and name, to protect their own airports and landing fields, and to carry out the purposes and provisions of this act, shall have and they are hereby given the right and authority to acquire by purchase, grant, or by condemnation, such condemnation, such estate or interest in any such building or structure or other object, whether natural object or not, and/or in the lands upon which situated, as is necessary to vest full and absolute ownership and control in perpetuity of the space above such land to the extent necessary to correct or abate the height of any such non-conforming building or other structure or object to meet the requirements of this act as to height limitation, within the zones designated.

This act shall not apply to any landing fields or strips now established or hereafter established by the civil aeronautics authority of the United States Government, known as "Emergency Landing Strips," which do not provide at least 1800 feet of landing area in all directions and which do not provide facilities for the housing, supply and servicing of aircraft.

No searchlight, beacon light, or other glaring light shall be used, maintained, or operated within said Montana airpor tzoning areas, so that the same shall reflect, glare or shine upon or in the direction of the airports. Enacted as part of the police power of the State of Montana.

Any person or firm or corporation violating any of the provisions of this law shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than $500.00 or by imprisonment for a period of not more than six months or by both such fine and imprisonment. Each such person, firm or corporation shall be deemed guilty of a separate offense for every day during any portion of which any violation of this law is committed, continued or permitted by such person, firm or corporation, and shall be punishable as provided by such law.

ACQUISITION AND OPERATION OF STATE AIRPORTS

(a) **Authority to establish state airports**—The commisison is authorized and empowered, on behalf of and in the name of this state, within the limitation of available appropriations, to acquire by purchase, gift, devise, lease, condemnation proceedings, or otherwise, property, real or personal, for the purpose of establishing and constructing airports, restricted landing areas, and other air navigation facilities, and to acquire in like manner, own, control, establish, construct, enlarge, improve, maintain, equip, operate, regulate, and police such airports, restricted landing areas, and other air navigation facilities either within or without this state; to make, prior to any such acquisition, investigations, surveys, and plans; to erect, install, construct, and maintain at such airports facilities for the servicing of aircraft and for the comfort and accommodation of air travelers, and to dispose of any such property, airport, restricted landing area, or any other air navigation facility,, by sale, lease, or otherwise, in accordance with the laws of this state governing the disposition of other like property of the state. It may not, however, acquire, or take over any airport, restricted landing area or other air navigation facility owned or controlled by a municipality of this state without the consent of such municipality. It may erect, equip, operate, and maintain on any airport buildings and equipment necessary and proper to establish, maintain, and conduct such airport and air navigation facilities connected therewith.

(b) **Airport protective privileges**—Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and restricted landing areas acquired or operated under the provisions of this act, it is hereby granted authority to acquire, in the same manner as is provided for the acquisition of property for airport purposes, easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of the airports or restricted landing areas, and such other airport protection privileges as are necessary to insure safe approaches to the landing areas of said airports and restricted landing areas, and the safe and efficient operation thereof. It is also hereby authorized to acquire, in the same manner, the

right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from such airport hazards for the purpose of maintaining and repairing such lights and marks. This authority shall not be construed as to limit the right, power, or authority of the state or any municipality to zone property adjacent to any airport or restricted landing area pursuant to any law of this state.

(c) **Joint operations**—It may engage in all such activities jointly with the United States, other states, and with municipalities or other agencies of this state.

(d) **Condemnation**—It may exercise the right of eminent domain, in the name of the state, in the manner provided by the laws of this state for the acquisition of real property for public purposes, for the purpose of acquiring any property which it is herein authorized to acquire. The acquisition of such property for any of said purposes is hereby declared to be a public use.

(e) **Leases and sales**—It may lease for a term not exceeding ten years, airports, or other air navigation facilities or real property acquired or set apart for airport purposes, to private parties, any municipal or state government or the national government, or any department of either thereof, for operation; and may lease or assign for a term not exceeding ten years to private parties, any municipal or state government or the national government, or any department of either for operation or use consistent with the purposes of this act, space, area, improvements, or equipment on such airports; may sell any part of such airports, other air navigation facilities or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto; and may confer the privilege of concessions of supplying upon the airports good, commodities, things, services and facilities; provided that in each case in so doing the public is not deprived of its rightful, equal and uniform use thereof.

(f) **Charges and rentals**—It shall have the authority to determine the charges or rental for the use of any state airports and the charges for any service or accommodations, under its control and the terms and conditions under which such properties may be used; provided that in all cases the public is not deprived of its rightful, equal, and uniform use of such property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expenses of operation to the state. The state shall have and the commission may enforce agisters' liens, as provided

by law for repairs to or improvement or storage or care of any personal property, to enforce the payment of any such charges.

STATE AVIATION FUND

Creation of state aviation fund—All costs and expenses of administering this act, including the salaries of employees and assistants provided for in section 6 hereof, the expenses of members of the commission, and all other disbursements necessary to carry out the purposes of this act, shall be paid out of the state aviation fund hereby created.

The state aviation fund shall be made up of the following revenues to-wit: All gifts and all legislative appropriations for said fund; all moneys received from any branch or department of the federal government, or from other sources, for the purposes mentioned in this act or for the furtherance of aeronautics generally in this state.

There shall also be paid into said fund the proceeds of one cent per gallon out of each five cents per gallon of gasoline license tax now imposed by the laws of Montana upon purchases of gasoline used for the operation of aircraft.

The revenue from said one cent per gallon of said tax shall no longer be placed in either the state highway fund or the gasoline license drawback fund as now required by Sec. 2381.22, R.C.M., 1935 as amended, but the same shall, when received by the state treasurer, be placed in the state aviation fund.

No part of said one cent per gallon of gasoline license tax imposed by the laws of Montana on gasoline purchased and used for the operation of aeroplanes or aircraft, shall be subject to refund under the provisions of Sec. 2396.4, R.C.M., 1935 as amended, it being the intent of this section to reduce from five cents to four cents per gallon the amount of gasoline license tax which may be refunded on purchases of gasoline used in the operation of aircraft, and to leave otherwise unchanged the provisions of said section 2396.4.

Aeronautics Functions Governmental—No Liability for Torts

The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of any airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment and operation of airports and other air navigation facilities whether by the state separately or jointly with any municipality or municipalities thereof; the assistance of this state in any such acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation; and the exercise of any other powers herein granted to the commission are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity, and such lands and other property and privileges

acquired and used by the state in the manner and for the purposes enumerated in this act shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity.

No action or suit sounding in tort shall be brought or maintained against the state or any municipality thereof, or the officers, agents, servants, or employees of the state or any municipality thereof, on account of any act done in or about the construction, maintenance, enlargement, operation, superintendence or management of any airport or other air navigation facility.

"Sovereignty in Space. Sovereignty in the space above the lands and waters of this state is declared to rest in the state except where assumed by the United States law. 2736.5, R.C.M.

"Ownership of Space. The ownership of the space above the lands and waters of this state is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in section 2736.7, R.C.M.; 2736.6, R.C.M.

Chapter 109, Laws of 1939, reads in part as follows:

"Lawfulness of Flight—Landing—Recovery of Damages. Flight in aircraft over the lands and waters of this state is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water, or in violation of the air commerce regulations which have been, or may hereafter be, promulgated by the department of commerce of the United States. The wilful and malicious use of aircraft in stunting or diving over livestock in a manner calculated to frighten or stampede them, shall be deemed an unlawful use thereof, and actual and punitive damages, in addition to the penalties, provided by this act, may be recovered in an action for damages caused therefrom. The landing of an aircraft on the lands or waters of another, without his consent, is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft of the pilot shall be liable for actual damage caused by such forced landing.

PENALTIES

Any person violating any of the provisions of this act, or any of the rules, regulations or orders issued pursuant thereto, shall be guilty of a misdemeanor and punishable by a fine of not more than $500.00 or by imprisonment in a county jail for not more than 90 days or both.